

Each and every day across this Country, numerous vehicles become disabled on a highway because of either an accident or mechanical failure. In those instances, towing companies are called to the scene to remove the vehicle involved in the accident or otherwise disabled. Without these necessary emergency services, often at inconvenient hours or during inclement weather, Americans would be at greater risk of injury – whether to themselves or their property.

Although towing could be characterized as cargo transportation subject to regulation, Congress enacted the “emergency towing” exception¹ to the Carmack Amendment² in 1963. This exception removes towing services involving damaged or disabled vehicles from the sides of roads from the burdensome requirements of the Carmack Amendment, such as holding carriers are strictly liable for damage to the cargo they are transporting.

However, when Congress enacted the “emergency towing” exception, it failed to define what is meant by the term “emergency” or phrase “emergency towing.” The lack of definition was squarely at issue when our firm recently defended a Kalamazoo, Michigan towing company, McDonald’s Towing and Rescue, Inc., in an action brought by the insurer of a towing customer, Acuity Insurance Company, as subrogee of Masterlink Concrete Pumping, LLC.

McDonald’s was contacted by Masterlink’s roadside service provider to tow a cement pump truck which was disabled on the side of Interstate 94 in Michigan from the scene of the disablement to Masterlink’s facility in Indiana. Due to unforeseen circumstances, the tow had to be conducted in stages, as the first truck dispatched was unable to complete the job and another truck had to be located and dispatched the next morning. After the cement pump truck was secured to the replacement truck, the driver stopped at a gas station to ensure that it was secured and then continued on. Unfortunately, the cement pump truck disconnected from the tow truck and overturned in the median.

The plaintiff sued McDonald for approximately \$700,000.00 in damages under the federal Carmack Amendment, rather than state-law remedies limiting the plaintiff to its no-fault insurance deductible of \$1,000.00. The plaintiff specifically argued that the “emergency towing” exception should not apply because the tow was

¹ 49 USC 13506(b)(3)

² 49 USC 14706

not ordered by emergency responders to an accident and tow was coordinated in stages over several hours. On behalf of McDonald's, we argued that the tow was an "emergency" because the cement pump truck was disabled and on the side of a roadway where it could not remain and that the "emergency towing" exception did apply.

The Court agreed with McDonald's, finding that "'emergency towing' bespeaks the towing of a vehicle from an unforeseen situation in which the vehicle must not remain – for example, where the law forbids its indefinite presence, or a private property owner refuses to permit it." The Court said that a non-emergency tow would occur where "an owner could choose to leave a disabled vehicle indefinitely – for example, when the breakdown occurs at the owner's own site, or in some other location that does not call for prompt or emergent removal." The Court ruled that the cement pump truck "could not remain indefinitely along the Interstate; rather the owner had to arrange for removal on an emergent basis."

The Court declined to find that the time elapsed from the time of the disablement to the time of the successful attachment of the cement pump truck to the second tow truck made the tow non-emergent, calling plaintiff's urged test a "stopwatch test." The Court further held that the statutory context of the Carmack Amendment supported the exemption in this case, as the Carmack Amendment is focused on commercial interactions for the delivery of goods, not the roadside towing of a disabled vehicle, as happened here. Accordingly, the Court granted McDonald's motion for summary judgment, limiting the plaintiff to its \$1,000.00 recovery, rather than the approximately \$700,000.00 in damages sought.

We are pleased with this result in Federal Court, which will hold persuasive value in other Federal Court. Although the case is currently being appealed, we are confident that the Sixth Circuit will uphold the ruling below.

Please visit our website www.cardellilaw.com/ to read the text of the Opinion and for updates on the Sixth Circuit appeal in this matter.